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Signed: Timothy H. Gens

Dated: July 21, 2000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Pawlak et al.

Appln. No. : 09/306,474

Filed : May 6, 1999

For : BLOCKING COMPOSITIONS
FOR IMMUNOASSAYS

Group Art Unit: 1643

Examiner: Unknown

RECEIVED

Petition for Revival of an Application for Patent
Abandoned Unavoidably Under 37 CFR §1.137(a)

JUL 26 2000

OFFICE OF PETITIONS

Hon. Assistant Commissioner for Patents
Washington D.C. 20231

Sir:

1. The above-referenced application became abandoned as of November 29, 1999 for failure to respond to Notice to File Missing Parts of Application. A Notice of Abandonment was mailed on June 22, 2000.

2. This petition is filed within one month of the date of abandonment in accordance with 37 CFR §1.137(a).

3. This application became abandoned unavoidably because the Notice of Abandonment states that "Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice...". The petitioner was unable to obtain the signature of co-inventor Victor Manneh thus making the filing of a proper reply unavoidable. The Declaration and Power of Attorney for Patent Application was mailed to his last known address, as indicated on the Declaration. Because of his refusal to sign the Declaration, filing a proper Response to the Notice to File Missing Parts of Application was unavoidable.

4. Enclosed with this Petition is a copy of the previously filed Declaration Under 37 C.F.R. Section 47 of Timothy H. Gens and the \$130.00 filing fee.

Met-013

07/27/2000 LBOND1
01 FC:122
02 FC:240

5. Also enclosed is the appropriate petition fee under 37 CFR §1.17(l). Enclosed please find our check in the amount of \$55.00.

Please revive this application.

Respectfully submitted,

By: Timothy H. Gens
Timothy H. Gens, Reg. No. 29,153

Dated: July 21, 2000

The Technology Law Group
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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 7

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JUN 22 2000

**SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS**

In re Application of
Pawlak, et al.
Application No. 09/306,474
Filed: May 6, 1999
Attorney Docket No. METRIKA-013
For: Blocking Compositions for
Immunoassays

LETTER
AND
NOTICE OF ABANDONMENT

A petition under 37 CFR 1.47(a) was received in the United States Patent and Trademark Office (Office) on December 2, 1999 (certificate of mailing dated Monday, November 29, 1999).

A review of the file reveals that on May 28, 1999, the Office mailed a Notice to File Missing Parts of Application to petitioner, which set forth a two (2) month shortened statutory period to submit the required payment of a \$380.00 filing fee, a properly signed oath or declaration in compliance with 37 CFR 1.63, and a \$65.00 surcharge for their late filing.

On December 2, 1999 (certificate of mailing November 29, 1999), petitioner filed a declaration, a \$380.00 filing fee, a \$65.00 surcharge, a request for a four (4) month extension of time, a petition under 37 CFR 1.47(a), and a declaration of facts of Timothy H. Gens, attorney of record. However, petitioner failed to pay the requisite petition fee of \$130.00 as set forth in 37 CFR 1.17(i).

The rules and statutory provisions governing the operations of the Office require payment of a fee upon filing a petition under 37 CFR 1.47(a). In this instance, the fee required is \$130.00. See 37 CFR 1.17(i). The petition in the above-identified application was not accompanied by payment of the required fee. Therefore, no consideration on the merits can be given to the present petition until the required fee is received by the Office.

Although petitioner filed a petition under 37 CFR 1.47(a) on December 2, 1999 (certificate of mailing November 29, 1999), petitioner was not relieved of the requirement to submit a timely and proper reply to the Notice to File Missing Parts of Application of May 28, 1999. Section 1.135(b) of the Code of Federal Regulations states, in relevant part: "Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application

may require." Because petitioner failed to submit a timely and proper reply to the Notice on or before Monday, November 29, 1999, within the meaning of 37 CFR 1.135(b), this application is properly held abandoned as of November 29, 1999.¹

Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and pay the proper petition fees within **ONE (1) month** of this decision before the petition under 37 CFR 1.47 may be addressed on its merits. No extensions of time are permissible. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice, a petition under 37 CFR 1.137(b) is suggested. The petition under 37 CFR 1.47 will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

Petitioner is reminded that a grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Petitions Attorney Christina T. Tartera:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
 Arlington, VA

¹ If the period to reply ends on a Saturday, Sunday or federal holiday, the reply is timely if it is filed on the next succeeding business day. MPEP 710.01(a). When a timely reply is not filed, the application is regarded as abandoned after midnight of the date the period for reply expired. Id. The fact that the period to reply ends on a Saturday, Sunday or federal holiday does not change the abandonment date. Id.